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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/451,341	11/30/1999	KEN BURROUGHS	TKMA.65581	8911

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EXAMINER

ROWAN, KURT C

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 12/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/451,341

Applicant(s)
BURROUGHS et al.

Examiner
KURT ROWAN

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3643



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Oct 9, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-9, 11-13, 15-19, and 21-24 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-9, 11-13, 15-19, and 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first and second opposing ends of the sidewall must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: upper and lower sidewalls, the first and second opposing ends of the upper and lower sidewalls, a lower interior compartment.

Claim Rejections - 35 U.S.C. § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 1-4, 6-9, 11-13, 15-19, 21-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 12 are confusing, in part, because the terms first and second are used in reference to too many elements such as the sidewall section and the baffle.

5. Claim 1 recites the limitation "said upper sidewall section" in line 8. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 1 recites the limitation "said sidewall sections " in line 11. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 1 recites the limitation "the upper section" in line 16. There is insufficient antecedent basis for this limitation in the claim.

8. Claim 1 recites the limitation "the opening" in line 18. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 12 recites the limitation "said sidewall sections" in line 12. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 12 recites the limitation "the upper section" in line 17. There is insufficient antecedent basis for this limitation in the claim.

11. Claim 12 recites the limitation "the opening" in line 18. There is insufficient antecedent basis for this limitation in the claim.

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Claim Rejections - 35 U.S.C. § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1, 2, 4, 6, 7-9, 11-13, 15-19, 21 as can be understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Woolworth.

The patent to Woolworth shows a live well tank having a bottom 2, sidewall section 1, a top 3 having an opening 6 with the top having an upper surface projecting inwardly from the sidewall section to cover a portion of the interior compartment. The top is coupled to the second end of the upper sidewall section. Woolworth shows a baffle 20, 24 coupled to the sidewall section extending inwardly from the sidewall section into the interior compartment having a first surface 23 extending generally horizontally from the sidewall section. Woolworth shows a second surface 25 extending outwardly toward the sidewall section to form an upper section of the interior compartment between the baffle and the top. In reference to claims 1, 12, and 16, Woolworth shows an overflow drain 26 coupled with the sidewall section of the tank between the top and the baffle whereby the upper section is capable of retaining water near the top of the compartment. Woolworth shows upper and lower sidewalls which can be defined as the portion of the sidewall above the baffle 24 and the portion of the sidewall below the baffle 24. Woolworth shows a lower interior compartment which is at the bottom, below the baffle. In reference to

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claims 6 and 17, Woolworth shows the baffle extending completely around the sidewall section. In reference to claims 7 and 15, Woolworth shows the first surface having a lower generally planar surface where the ring 20 meets bead 24 and a second curved surface since surface 25 is cylindrical. In reference to claims 8, 18, Woolworth shows a ledge surface 5 extending outwardly from the sidewall section 1. In reference to claims 11 and 19, Woolworth shows a sealing flange 10 upstanding from the upper surface of the top 3. In reference to claims 11 and 21, Woolworth shows a collar 7 coupled with the sealing flange 10. The collar appears to be made from metal which is a resilient material.

Claim Rejections - 35 U.S.C. § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woolworth.

The patent to Woolworth shows a live well tank for use on a boat to hold fish as discussed above.

In reference to claim 3, Woolworth appears to show a circular opening, but it would have been obvious to a rectangular opening since the function is the same and no stated problem is solved.

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Allowable Subject Matter

16. Claims 22-24 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

17. Applicant's arguments with respect to claims 1-4, 6-9, 11-13, 15-19, 21 have been considered but are moot in view of the new ground(s) of rejection. In response to the examiner's objection to the specification, applicant has removed these features from the claims, but should have merely inserted these features into the specification. By deleting them, the claims have become indefinite. As to the baffle having first and second surfaces, the baffle 24 of Woolworth has first and second surfaces with bottom part of the curve being the first surface and the top part of the curve being the second surface. Applicant's other arguments have been noted but are not deemed persuasive at this time noting that small fish such as minnows could move in passages 25.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KURT ROWAN** whose telephone number is (703) 308-2321.

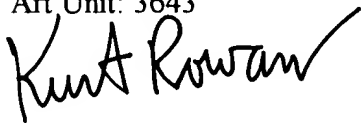
The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

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A handwritten signature in black ink that reads "Kurt Rowan". The signature is written in a cursive style with a large, stylized "K" and a long, sweeping underline.

KURT ROWAN

PRIMARY EXAMINER

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December 28, 2003